



# STATE OF INDIANA

MICHAEL R. PENCE, Governor

## INDIANA EDUCATION EMPLOYMENT RELATIONS BOARD

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To: Bargaining Parties & Stakeholders

From: Sarah Cudahy, Executive Director

Date: July 29, 2016

## **2016 Compliance Report Executive Summary & Compliance Reminders<sup>1</sup>**

### **I. Executive Summary**

In 2015, the General Assembly tasked IEERB with evaluating the compliance of teacher collective bargaining agreements. Ind. Code § 20-29-6-6.1. Pursuant to this authority, IEERB, through an appointed Compliance Officer, issued 210 compliance reports.<sup>2</sup> Parties had 15 days to appeal the report to the IEERB Board ("Board"). Although not required, the Board allowed all appealing parties the opportunity to present briefs and oral argument. On June 13, 2016, the Board heard oral argument, discussed, and voted on all of the appeals. All final orders were issued on or before July 13, 2016. The result was:

- 18 compliant CBAs.
- 188 non-compliant CBAs with a cease and desist penalty issued.
- 4 non-compliant CBAs with cease and desist and prior approval penalties issued.

These penalties do not affect the current CBA, only future MOUs and CBAs.

In general, the Board affirmed the Compliance Officer's recommendations. However, the Board did determine that stipends do not have to be part of the compensation plan and do not have to follow its restrictions.

The two biggest areas of noncompliance were the bargaining of impermissible items and the compensation plan. Common impermissible items bargained were:

- The number – not just the compensation – of extracurricular activity positions.
- Association rights.

For the compensation plan, the following were major areas of non-compliance:

- Failure to restrict increases to the attainment – not just possession – of degrees and credit hours.
- Failure to restrict increases to content area degrees and credit hours.
- Failure to restrict increases based on education and experience to 33% of increase.

All CBAs, compliance reports, appeals, and briefs are available through IEERB Search.<sup>3</sup> A list of compliant CBAs is on our website at [www.in.gov/ieerb/2411.htm](http://www.in.gov/ieerb/2411.htm).

<sup>1</sup> Please note that there are lawsuits currently pending regarding the Board's final compliance reports.

<sup>2</sup> Compliance reports are due in the year of the expiration of the CBA. All one-year CBAs (2015-2016) have been reviewed. The two-year CBAs (2015-2017) will be reviewed prior to March 30, 2017.

<sup>3</sup> Link is <https://ieerbsearch.ieerb.in.gov/login.aspx>. CBAs are also available through Gateway:

[https://gateway.ifionline.org/report\\_builder/Default3a.aspx?rptType=collBargain&rpt=contract\\_uploads&rptName=Collective%20Bargaining%20Contract%20Uploads](https://gateway.ifionline.org/report_builder/Default3a.aspx?rptType=collBargain&rpt=contract_uploads&rptName=Collective%20Bargaining%20Contract%20Uploads)

## II. Compliance Reminders

The following reminders are based on the Board's rubric and determination. These items apply to all bargaining parties (even if you did not appeal a compliance report). The compliance rubric for 2016 can be found online at [http://www.in.gov/ieerb/files/2016\\_IEERB\\_Rubric%281%29.pdf](http://www.in.gov/ieerb/files/2016_IEERB_Rubric%281%29.pdf).

### General:

- Parties may not bargain the number of ECA positions. The number may be included in the CBA if accompanied by a statement that the number of positions was not bargained.
- Parties may not bargain Association rights.<sup>4</sup>
- Parties must include a ratification date (must be August 1 or later).
- On July 21, 2016, the Indiana Supreme Court issued an order in the Jay case.
  - CBAs providing flexibility for the superintendent to set new hire salaries within a bargained salary range or scale are permissible.
  - Ancillary duties may take place during the school day.<sup>5</sup>

### Compensation Plan:

- Stipends do not have to be part of the compensation plan, and are not subject to the requirements of the compensation plan.<sup>6</sup>
- Base increases may only be based on the statutory factors. Additional details on this requirement are included in the compliance rubric and handbook.
- Base increases for education are limited to the attainment of content area degrees or credit hours.<sup>7</sup>
- If the parties bargain amounts in the rows/columns of a salary schedule that are higher than the prior year's schedule, the compensation plan must clearly state that teachers rated ineffective or improvement necessary do not move onto the new salary schedule and remain at their prior year salary level.

### MOUs:

- MOUs must be sent to IEERB within 2 business days of ratification.<sup>8</sup>
- MOUs are generally not permissible.
- MOUs may be allowed when there is:
  - Newly discovered information or an unanticipated event that was not known or available at the time the parties ratified the original CBA.<sup>9</sup>
  - Nonrule policy guidance issued by the Board addressing unanticipated circumstances impacting multiple bargaining parties (current ones online).

**IEERB is not able to evaluate the compliance of CBAs prior to the compliance review** (unless a prior approval CBA). We are, however, happy to discuss the rubric and compliance in general.

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<sup>4</sup> Leave for Association business is allowed. Additionally, the statutory provision regarding teacher rights may be included in a CBA.

<sup>5</sup> Parties may only bargain the compensation for ancillary duties – assignments are not bargainable. These payments must be clearly marked as for ancillary duties.

<sup>6</sup> Note: this is different from the Compliance Officer's findings.

<sup>7</sup> Attainment means newly attained, not just possessed. The Board defines "content area" as any subject matter specified by DOE (e.g., computer education) that the teacher is licensed to teach. The parties may either specify content area, or delineate the compensable degrees, in their compensation plans (e.g., increases will be provided for content area master's degree, or the following master's degrees).

<sup>8</sup> Failure to do so may result in a finding of noncompliance, even if the substance is compliant. 560 IAC 2-8-4(b).

<sup>9</sup> A statement describing why the MOU should be allowed must accompany the MOU.